

## § 560.1

## 46 CFR Ch. IV (10–1–99 Edition)

### § 560.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter “U.S. flag vessel”) to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel (hereinafter “U.S. flag carrier”) may petition the Federal Maritime Commission for relief under the authority of section 13(b)(6) of the Shipping Act of 1984 (“the Act”) (46 U.S.C. app. 1712(b)(6)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(6) may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

(b)(1) This part implements the statutory notice and hearing requirement and ensures that due process is afforded to all affected parties. At the same time, it allows for flexibility in structuring proceedings so that the Commission may act expeditiously whenever harm to a U.S. flag carrier resulting from impaired access to cross trades has been demonstrated or is imminent.

(2) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and service of documents and copies of documents (§§ 502.114(b) and 502.118 of this chapter, and except as the Commission may otherwise determine by order.

(c) The condition of unduly impaired access will be found only where a U.S. flag carrier is commercially able to enter a trade in which its access is being unduly impaired, or is reasonably

expected to be impaired, or where actual participation in a trade by a U.S. flag carrier is being restricted for reasons other than its commercial ability or competitiveness.

(d) In examining conditions in a trade between foreign ports, and in considering appropriate action, the Commission will give due regard to U.S. maritime policy and U.S. Government shipping arrangements with other nations, as well as the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom Commission action is contemplated.

[49 FR 45406, Nov. 15, 1984, as amended at 55 FR 28400, July 11, 1990; 64 FR 8009, Feb. 18, 1999]

### § 560.2 Factors indicating conditions unduly impairing access.

For the purpose of this part, factors which would indicate the existence of conditions created by foreign government action or action of a common carrier acting alone or in concert with any person, which unduly impair access of a U.S. flag vessel engaged in or seeking access to ocean trade between foreign ports, include, but are not limited to:

(a) Imposition upon U.S. flag vessels or upon shippers or consignees using such vessels, of fees, charges, requirements, or restrictions different from those imposed on national-flag or other vessels, or which preclude or tend to preclude U.S. flag vessels from competing in the trade on the same basis as any other vessel.

(b) Reservation of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S. flag vessels.

(c) Use of predatory practices, possibly including but not limited to the use of a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade, and closed conferences employing deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

(d) Any government or commercial practice that results in, or may result

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in, unequal and unfair opportunity for U.S. flag vessel access to port or intermodal facilities or services related to the carriage of cargo inland to or from ports in the trade.

(e) Any other practice which unduly impairs access of a U.S. flag vessel to trade between foreign ports.

49 FR 45406, Nov. 15, 1984. Redesignated and amended at 64 FR 8009, 8010, Feb. 18, 1999]

### § 560.3 Petitions for relief.

(a) *Filing.* (1) Any owner or operator of a liner, bulk, tramp or other vessel documented under the laws of the United States who believes that its access to ocean trade between foreign ports has been, or will be, unduly impaired may file a written petition for relief under the provisions of this part.

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition shall be accompanied by remittance of a \$177 filing fee.

(b) *Contents.* Petitions for relief shall include the following and shall also include an affidavit attesting to the truth and accuracy of the information submitted:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made and a statement as to whether the party is a foreign government, agency or instrumentality thereof;

(3) A concise description and citation of the foreign law, rule or government or commercial practice complained of;

(4) A certified copy of any law, rule, regulation or other document concerned, when available and, if not in English, a certified English translation thereof;

(5) Any other information relating to any law, rule or regulation, or indicating the existence of any government or commercial practice;

(6) A description of the service offered or proposed, as a result of which petitioner is alleging harm, including information which indicates the ability

of the petitioner to otherwise participate in the trade;

(7) A clear description, in detail, of the harm already caused, or which may reasonably be expected to be caused, to the petitioner for a representative period, including:

(i) Statistics documenting present or prospective cargo loss due to discriminatory government or commercial practices if harm is alleged on that basis; such statistics shall include figures for the total cargo carried or projected to be carried by petitioner in the trade for the period, and the sources of the statistics;

(ii) Information documenting how the petitioner is being prevented from entering a trade, if injury is claimed on that basis;

(iii) Statistics or other information documenting the impact of discriminatory government or commercial practices resulting in an increase in costs, service restrictions, or other harm on the basis of which injury is claimed, and the sources of the statistics; and

(iv) A statement as to why the period is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues.

(9) A recommended action, rule or regulation, the result of which will, in the view of the petitioner, address the alleged conditions unduly impairing the access of petitioner to the affected trade.

(c) *Deficient petition.* A petition which substantially fails to comply with the requirements of paragraph (b) of this section shall be rejected and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

[49 FR 45406, Nov. 15, 1984, as amended at 63 FR 50537, Sept. 22, 1998]

### § 560.4 Proceeding.

(a) Upon the Commission's own motion or upon the filing of a petition which meets the requirements of § 587.3, when there are indications that conditions unduly impairing the access of a U.S. flag vessel to trade between foreign ports may exist, the Commission will institute a proceeding pursuant to this part.